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No.03-287

IN THE

Supreme Court of the United States

REGINALD WILKINSON, DIRECTOR, et al.,

Petitioner,

v.

WILLIAM DWIGHT DOTSON et al.,

Respondent.

On Petition For a Writ Of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

ROBERT S. WALKER
(Counsel of Record)
EDWARD J. SEBOLD
JOHN Q. LEWIS
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, OH 44114-1190
(216) 586-3939

Counsel for Respondents

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QUESTION PRESENTED

Can a prisoner assert a § 1983 claim challenging procedures used in connection with parole proceedings where such a challenge, if successful, would neither invalidate a parole decision nor affect the duration of the prisoner's sentence or confinement?

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INTRODUCTION

For over 30 years, this Court has consistently acknowledged that challenges to certain aspects of parole are actionable under § 1983. Although the Court has recognized some limits on these actions, it has emphasized that these limits are not applicable to every parole challenge. If a prisoner seeks to undermine the length of his sentence or the result of a parole hearing, the action is barred unless the prisoner first has his sentence or parole decision overturned. But if a prisoner brings a § 1983 suit "for using the wrong [parole] procedures, not for reaching the wrong result, and if that procedural defect did not necessarily imply the invalidity of the [parole decision]," then the lawsuit is not barred. *E.g.*, *Spencer v. Kemna*, 523 U.S. 1, 17 (1998). There is no shortage of Supreme Court jurisprudence to illustrate this principle.

Because application of this rule requires a careful analysis of the type of challenge at issue, it is necessarily fact specific. The outcome of any case depends solely on the exact nature of the prisoner's claim. The circuit courts have been faithful to the Court's fact-bound distinctions and consistent in applying this well-established rule. To be sure, the lower courts have reached different results in different cases, but these differences lie entirely in variations among the prisoners' underlying claims, not the application of the rule of law.

Like all other circuits, the Sixth Circuit's decision below correctly applied Supreme Court precedent. The court held, unanimously, that Respondent Dotson's claim was not barred because his challenge was entirely unrelated to any particular parole decision. Thus, a win for Dotson neither necessarily implies the invalidity of his sentence or conviction, nor results in his earlier release. In Respondent Johnson's case, a majority of the Sixth Circuit properly held that, because Johnson challenged only parole procedures, and not the decision denying his parole, his claim was not barred, either.

Importantly, even dissenting judges in Johnson's case did not proffer a different rule of law, but rather interpreted the factual allegations of Johnson's claim differently than the majority.

There is, thus, no need for further guidance from this Court on the rule of law to be applied to § 1983 challenges involving parole processes. The recent decisions of the Court commenting on the issue, *Edwards v. Balisok*, 520 U.S. 641 (1997), and *Spencer v. Kemna*, 523 U.S. 1 (1998), and other Supreme Court decisions, collectively set forth a uniform rule that has only begun to be applied by the circuits. Circuit courts have, in this short time, developed a consistent, yet fact-based, approach to ruling on these § 1983 claims. Accordingly, the petition should be denied.

REASONS FOR DENYING THE WRIT

I. THERE IS NO CIRCUIT SPLIT ON THE FACT-BOUND ISSUES PRESENTED IN THE PETITION.

Petitioners argue that this Court should grant review to resolve a circuit conflict over whether *Heck* applies "to claims whose success would result in a new parole hearing . . . but not necessarily alter the parole decision or shorten the duration of confinement." (Pet. 10.) There is, however, no split of authority on this issue. While lower courts have reached different outcomes in cases involving § 1983 challenges relating to parole, these differences are fully explained by factual differences among the cases; the lower courts' rules of decision are completely consistent, and the lower courts faithfully adhere to this Court's jurisprudence.

A. Supreme Court precedent

This Court has consistently distinguished between § 1983 challenges to parole hearing procedures and challenges to the merits of a parole decision. In *Preiser v. Rodriguez*, 411 U.S. 475 (1973), the Court first addressed the issue. There, the Court held that state prisoners could not bring § 1983 claims

seeking restoration of prison good time credits, because had the prisoners been successful, they would have been released from prison sooner. As a result, their claims impermissibly overlapped with a federal habeas remedy. *Id.* at 500 ("when a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release . . . his sole federal remedy is a writ of habeas corpus").

Applying the same reasoning, in *Heck v. Humphrey*, 512 U.S. 477 (1994), this Court rejected a prisoner's § 1983 suit, in which the prisoner claimed that state officials had engaged in an unlawful investigation that led to his arrest and conviction. The Court reasoned that the § 1983 claim could not be maintained absent a successful challenge to the plaintiff prisoner's conviction, because a ruling in his favor would "necessarily demonstrate the invalidity of his conviction." *Heck*, 512 U.S. at 481. That is, the Court concluded that the prisoner could not recover damages for an unconstitutional conviction until he first prevailed in challenging the merits of that conviction. Because a state court appeal of the prisoner's conviction was then-pending and had not been terminated in his favor, his claim was barred. Importantly, however, the Court recognized that a § 1983 cause of action could be a proper vehicle for some challenges to procedures used in, but not decisions of, a criminal hearing:

> . . . if the district court determines that the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed.

Id. at 487.

Edwards v. Balisok, 520 U.S. 641 (1997), further defined permissible § 1983 challenges, this time in the context of parole hearings. There, prisoner Balisok filed a § 1983 claim for an alleged unconstitutional deprivation of his good time

credits. *Id.* at 643. Balisok's claim asserted deceit and bias on the part of the decision-maker who stripped him of his credits. Because those allegations necessarily implied the invalidity of that decision, *i.e.*, bias and deceit led to the wrong decision, the claim was not cognizable under § 1983. *Id.* at 648.

As in *Heck*, the Court in *Balisok* did not bar all § 1983 challenges to parole procedures. Rather, the Court acknowledged that a plaintiff may be entitled to nominal damages in a § 1983 challenge alleging loss of credits without due process (*id.* at 645), and emphasized that a claim for prospective injunctive relief would likely not "necessarily imply" the validity of a sentence or conviction. *Id.* at 648.

In contrast to *Heck* and *Balisok*, in *Wolff v. McDonnell*, 418 U.S. 539 (1974), a case petitioners conveniently ignore, the Court permitted a § 1983 action challenging Nebraska's *process* for revoking good-time credits. The key difference between *Wolff* and the Court's decisions barring certain § 1983 actions is that, in *Wolff*, the plaintiffs did not seek actual restoration of their credits, but instead challenged state-created parole procedures. *Wolff* 's facts, thus, did not implicate the rule that barred the prisoner § 1983 actions challenging confinement and parole decisions in *Heck* and *Balisok*. Instead, the Court in *Wolff* held that Nebraska's parole procedures embodied a protected liberty interest and, thus, permitted the prisoners to pursue their § 1983 claim. *Id.* at 556. *See also Greenholz v. Nebraska Penal Inmates*, 442 U.S. 1, 12 (1979) (holding § 1983 cognizable because "the expectancy of release provided in [a parole] statute is entitled to some measure of constitutional protection").

Reaffirming this distinction between challenges to outcome and procedure, the Court in *Spencer v. Kemna*, 523 U.S. 1 (1998), recently confirmed that § 1983 is an appropriate vehicle to challenge parole procedures. The question in that case was whether a former prisoner could continue to pursue his habeas petition challenging parole revocation, even though

the petition was seemingly moot because he had been released. *Id.* at 3-5. The petitioner argued, in part, that his habeas action was not moot because, under *Heck*, he needed to invalidate the decision before pursuing a § 1983 action challenging the parole decision. The Court rejected the argument, affirmed dismissal on mootness grounds, and re-articulated the rule that has emerged from Supreme Court precedent:

> "[i]f [a] petitioner were to seek damages for using the wrong [parole] procedures, not for reaching the wrong result, and if that procedural defect did not necessarily imply the invalidity of the revocation, then *Heck* would have no application at all"

Id. at 17 (internal citations omitted).

B. There Is No Circuit Split.

Petitioners' "conflicting" decisions, when viewed in light of their underlying facts, are consistent with Supreme Court precedent and uniform with one another. All apply the critical distinction between outcome and procedure developed in the Court's § 1983 jurisprudence. Any analytical variations are explained by the factual differences in each case, specifically differences between the kinds of challenges at issue, not by any conflicting interpretation or application of the law. And, in any event, these factual differences and results do not implicate the facts of Respondents' claims, making the cases at issue here particularly inappropriate vehicles to address any perceived conflict among these decisions.

1. The Sixth, Seventh and D.C. Circuits have uniformly concluded that a prisoner can challenge parole procedures through § 1983.

Petitioners correctly acknowledge that reported decisions from the Sixth, Seventh and D.C. Circuits are uniform in their treatment of § 1983 challenges to parole procedures. (Pet. 10-11.) These circuits have, consistent with Supreme Court

precedent, looked to the nature of the challenge to determine whether a § 1983 action involving parole procedures is barred.

The D.C. Circuit, for example, has addressed both permissible and impermissible § 1983 challenges involving parole. In *Anyanwutaku v. Moore*, 151 F.3d 1053 (D.C. Cir. 1998), the court allowed a prisoner's § 1983 claim to proceed, where in *Best v. Kelly*, 39 F.3d 328 (D.C. Cir. 1994), the same court affirmed the district court's dismissal of a prisoner's § 1983 claim. Despite differing results, the panels in each of those cases adhered to a uniform rule of law.

In *Anyanwutaku*, the court refused to bar a § 1983 claim where the plaintiff alleged that the defendants violated his due process and equal protection rights by miscalculating his parole eligibility date and mis-classifying him as a felon. 151 F.3d at 1054. Reviewing Supreme Court precedent, the court concluded that a state prisoner may bring a § 1983 claim when, "if successful, it would not 'necessarily imply' or automatically result in, a speedier release from prison." *Id.* at 1056. Because parole in that jurisdiction was discretionary, a successful challenge to a prisoner's parole eligibility date was "no guarantee that he would have been released any earlier." *Id.* at 1055. Section 1983 was, thus, an appropriate vehicle because, if successful, "he would have earned nothing more than a 'ticket to get in the door of the parole board.'" *Id.* at 1056.

On the other hand, in *Best*, the D.C. Circuit affirmed the lower court's dismissal of prisoners' § 1983 claims relating to the loss of their good time credits. 39 F.3d at 330. There, the prisoners' challenge would have directly affected the duration of their confinement. *Id.* Following this Court's *Preiser* decision, the D.C. Circuit held that such a challenge to the length of the prisoners' sentences was barred. *Id.* Unlike the challenges at issue in *Anyanwutaku*, the prisoners' claims in *Best*, if successful, would have resulted in their earlier release.

The D.C. Circuit's analysis in those decisions was followed by the Sixth Circuit in the court below (*Dotson*, 329 F.3d at 472):

> where a prisoner does not claim immediate entitlement to parole or seek a shorter sentence but instead lodges a challenge to the procedures used during the parole process as generally improper or improper as applied to his case, and that challenge will at best result in a new discretionary hearing the outcome of which cannot be predicted, we hold such a challenge cognizable under § 1983.

And the D.C. and Sixth Circuit holdings are consistent with Seventh Circuit precedent. *Johnson v. Litscher*, 260 F.3d 826, 830-31 (7th Cir. 2001) (permitting § 1983 challenge to parole processes that did not seek to shorten sentence or confinement); *Ferguson v. Nagel*, 34 Fed. Appx. 499 (7th Cir. 2001) (same). (Pet. 10.)

2. The decisions of the First, Eighth and Tenth Circuits are not inconsistent with the decisions of the Sixth, Seventh and D.C. Circuits.

Citing decisions by the First, Eighth and Tenth Circuits, petitioners attempt to manufacture a circuit split by ignoring the facts of these decisions and focusing on their results. When understood in their factual context, it is clear that these circuits applied Supreme Court precedent in precisely the same manner as the Sixth, Seventh and D.C. Circuits.

The petitioners first assert that the Tenth Circuit's decision in *Vann v. Oklahoma State Bureau of Investigation*, 28 Fed. Appx. 861, 862 (10th Cir. 2001), is inconsistent with other circuits, but this is wrong. In that case, a prisoner brought a § 1983 action alleging that the defendants maintained false or incorrect information in his criminal history file. Importantly, the prisoner alleged that this incorrect information was used to deny him parole—thereby rendering his challenge one

directed to the merits of the parole decision. *Id.* The Tenth Circuit affirmed dismissal because, if the prisoner's claim was successful, it would necessarily cast doubt on the substance of the parole board's decision, *i.e.*, that he was wrongly denied parole because of the incorrect information in his file. *Id.* at 864. Thus, unlike the decisions of the other circuits, *Vann* unquestionably involved a challenge to the merits of, not the procedures used during, a parole proceeding.

For the same reason, petitioners are wrong to cite the Tenth Circuit's decision in *Waeckerle v. Oklahoma*, 37 Fed. Appx. 395, 395 (10th Cir. 2002), as evidence of a split in authority. The prisoner there brought a § 1983 claim challenging a parole decision because, according to the plaintiff, the parole investigator unconstitutionally relied on errors contained within the prisoner's pre-sentence report. *Id.* The panel affirmed dismissal because the prisoner's claim challenged the calculus of the parole decision, *i.e.*, its outcome. Accordingly, no decisions from the Tenth Circuit appear to be in conflict with other circuit precedent.

Like the decisions of the Tenth Circuit, the cited decisions of the First and Eighth Circuits are unpersuasive evidence of a circuit conflict. The supposed authoritative decisions of those courts were not published and were far too conclusory to demonstrate the circuits' rules of decision. *See McClain v. Fuseymore*, No. 97-2095, 1998 U.S. App. LEXIS 8332 (1st Cir. Apr. 25, 1998); *Bass v. Mitchell*, No. 93-1414, 1995 U.S. App. LEXIS 9663 (8th Cir. Apr. 28, 1995).[1] The Eighth Circuit merely reasoned that, if the prisoner were successful, it would "necessarily imply the invalidity of [the prisoner's] confinement." *Bass*, 1995 U.S. App. LEXIS, at *2. But the

[1] The First and Eighth Circuits have similar local rules reflecting that unpublished opinions generally lack precedential value. 8th Cir. R. 28A(i) (stating unpublished opinions have no precedential value); 1st Cir. R. 36(b)(2)(F) (stating that, unless unpublished decision relates to the case, "only published opinions may be cited" to the court).

court failed to analyze how or why this would occur. And the First Circuit, providing even less analysis, held that the prisoner's claims were barred because challenges to the denial of parole are not cognizable without first exhausting state remedies. *McClain,* 1998 U.S. App. LEXIS, at *2.

Even assuming these cases have sufficient precedential value to be considered in an analysis of the supposed circuit conflict, neither holding is completely inconsistent with holdings of other circuits. Rather, the rule set forth in each of these supposed "conflicting" decisions is in line with others—including circuits not mentioned by petitioners—holding that a prisoner's § 1983 claim is not barred by *Heck* or *Balisok* when it merely challenges the procedures a state employs in considering applications for parole, as opposed to the merits or outcome of the parole board's decision. *Anyanwutaku,* 151 F.3d at 1053; *Dotson v. Wilkinson*, 329 F.3d 463, 472 (6th Cir. 2003); *Johnson*, 260 F.3d at 830-31. *See also Leamer v. Fauver*, 288 F.3d 532, 543 (3d Cir. 2002) (reversing dismissal of § 1983 claim challenging denial of eligibility for parole because "[w]hatever the decision on the § 1983 claim, Learner's release date will not change"); *Thomas v. Georgia State Bd. of Pardon & Paroles,* 881 F.2d 1032, 1033 (11th Cir. 1989) (reversing dismissal of inmate's § 1983 claim because "[a prisoner's] challenge to the procedure by which parole decisions are made, as opposed to the denial of his parole, can properly proceed under section 1983"); *Miller v. Jackson,* No. 94-6395, 1994 U.S. App. LEXIS 26817, at * 1 (4th Cir. Sept. 23, 1994) (holding that prisoner properly brought his claims under § 1983 because he "challenged not the right to parole, but the right to procedural due process in the consideration of parole").

C. No circuits are internally inconsistent.

Petitioners assert that the Ninth and Fourth Circuits "have issued opinions going in both directions." (Pet. 12.) Here, too, while courts in these circuits may have reached different results, the legal principles as applied are uniform.

The Ninth Circuit's decisions in *Butterfield v. Bail,* 120 F.3d 1023 (9th Cir. 1997), and *Neal v. Shimoda*, 131 F.3d 818 (9th Cir. 1997), are not contradictory. The failed § 1983 claim at issue in *Butterfield* challenged the outcome reached by the parole board. Specifically, the prisoner asserted that incorrect information in his prisoner file was used to deny him parole. *Id.* at 1024. His challenge, if successful, would have invalidated the parole decision and therefore was barred.[2]

In contrast, *Neal* (similar to Dotson's case here) involved a prisoner's claim that an *ex post facto* law unlawfully modified his parole eligibility date. No parole decision was at issue there. In fact, the *Neal* panel specifically recognized that *Butterfield* was the prevailing circuit precedent but was distinguishable on its facts. *Neal*, 131 F.3d at 824 ("[w]e have little difficulty distinguishing this case from our recent decision in *Butterfield*."). These two Ninth Circuit cases, thus, reflect different fact patterns, not different rules of law.

The Fourth Circuit has no inconsistent decisions, either. The two cases cited by Petitioners, *Husketh v. Sills*, 34 Fed. Appx. 104 (4th Cir. 2002), and *Miller v. Jackson*, No. 94-6395, 1994 U.S. App. LEXIS 26817 (4th Cir. Sept. 23, 1994), are both one-page per curium decisions, with little factual background from which a rule could emerge.[3] Nonetheless, in *Husketh*, the court affirmed dismissal of the *pro se* prisoner's

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[2] This decision, too, is consistent with the Tenth Circuit's treatment of similar factual scenarios in *Vann* and *Waekerele*.

[3] Similar to the First and Eight Circuit local rules, Fourth Circuit unpublished decisions have no precedential value. 4th Cir. R. 36(c).

§ 1983 action because his unspecified "challenge of his parole eligibility implies the invalidity of his continued confinement." 34 Fed. Appx. at 104 n.2. On the other hand, the court in *Miller* permitted a § 1983 prisoner's due process challenge to proceed because he "challenged not the right to parole, but the right to procedural due process in the consideration of parole," a far different claim than that made in *Husketh*. These decisions, as well, reflect differences in results based on factual allegations, not differences in how the law was applied.

II. THE SIXTH CIRCUIT'S DECISION WAS CORRECT.

Contrary to Petitioners' claim, the Sixth Circuit's *Dotson* decision is consistent with this Court's holdings. Like this Court, the Sixth Circuit recognized that procedural challenges to parole hearings are permitted under § 1983 so long as those challenges do not necessarily invalidate the parole decision.

A. Johnson permissibly challenged parole procedures, not the parole decision.

The court below correctly held that Johnson's § 1983 claim is not barred because he challenged only procedural defects during his parole hearing. *Dotson*, 329 F.3d at 471. For instance, Johnson asserted that Ohio's parole procedures require at least two hearing officers to conduct the parole hearing, but that only one showed up for his parole hearing. Johnson also alleged that a parole applicant must be given the opportunity to be heard, but at his parole hearing, Johnson was not permitted to speak. *Id.* It is clear that these allegations are entirely procedure-based.[4] Indeed, the parole board can reach

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[4] One potential procedural defect in the petition is that it may be moot. Johnson received part of his requested relief, a new parole hearing, after filing his lawsuit. The record does not reflect whether that hearing comported with Due Process or otherwise remedied the alleged violation of his constitutional rights. Even if it had, Johnson would still be permitted

exactly the same result if Johnson is provided a new hearing. *Id.* ("[t]he remedying of many procedural defects will not cause any different outcome at all, much less 'necessarily imply' that the prisoner should be released immediately or sooner than he would have been released absent the challenge").

In addition, while Johnson has claimed that the hearing officer used incorrect information in considering his parole application, he is not necessarily alleging that the decision denying him parole was wrong. Rather, the allegations relating to incorrect information demonstrate the kinds of issues Johnson would have addressed had he been permitted to speak at his hearing.

At bottom, Johnson's § 1983 challenge is a narrow one. He asserts procedural and substantive due process violations in connection with the procedures used during his parole hearing—he does not challenge the decision itself. Since a ruling in his favor would not necessarily invalidate the actual parole decision, Johnson's § 1983 suit is consistent with principles established in this Court's prior holdings. The Sixth Circuit correctly held that his claim is not barred, and that *sua sponte* dismissal of his claim was error.

B. Dotson's claim is proper under § 1983 because, if successful, it will not invalidate any decision.

The propriety of Dotson's action is even clearer. Indeed, the decision in his case was unanimous. Dotson's challenge does not involve a parole decision or any other decision related to fact or duration of confinement, at all. *Dotson*, 329 F.3d at 471. Rather, Dotson challenges the retroactive application of Ohio's parole-eligibility rules to his sentence. If Dotson wins, he simply becomes *eligible* for parole sooner. He is not guaranteed an earlier release or even a new parole

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to seek nominal damages. *E.g., Carey v. Piphus*, 435 U.S. 247 (1977).

hearing, nor is any past parole decision called into question. All of the reported circuit cases addressing this similar issue ruled as the Sixth Circuit did. *E.g., Anyanwutaku*, 151 F.3d at 1055-56.

Considering the implications of Dotson's success confirms that his § 1983 action is permissible. Dotson was eligible for and denied parole in 1995 and was scheduled for a second parole hearing in 2005. On March 1, 1998, the Ohio Parole Board adopted new guidelines for parole. Two years later, at his "halfway review," Dotson was informed that because of the new guidelines, he would not be again eligible for parole until 2012, and that his 2005 hearing would be merely another review hearing. If successful on his § 1983 claim, however, Dotson merely would be *eligible* to be considered for parole at his 2005 hearing. *Dotson*, 329 F.3d at 465-66. No decision would be invalidated, and because parole in Ohio is discretionary, there would be no guarantee that Dotson would be released early. Dotson simply would earn a "ticket to get in the door to the parole board." *Anyanwutaku*, 151 F.3d at 1056.

III. *MUHAMMAD v. CLOSE* IS IRRELEVANT TO THE ISSUES PRESENTED HERE.

Petitioners urge the Court to accept this case as a companion to the recent grant of *certiorari* in *Muhammad v. Close*, Case No. 02-9065, *cert. granted*, 123 S. Ct. 2573 (June 16, 2003). (Pet. 26.) But that case differs significantly from ours, and neither is helpful in analyzing the issues presented by the other.

Muhammad concerns conditions of confinement, not parole procedures. There, a prisoner brought a § 1983 challenge to prison conditions, claiming that a guard at his prison facility falsely charged the prisoner with misconduct in retaliation for the prisoner's exercise of his First Amendment rights. This Court granted *certiorari* to determine (1) whether a plaintiff who wishes to bring a § 1983 suit challenging only the

conditions, rather than the fact or duration, of his confinement, must satisfy the favorable termination requirement of *Heck v. Humphrey*, and (2) whether a prison inmate who has been, but is no longer, in administrative segregation may bring a § 1983 suit challenging the conditions of his confinement (*i.e.*, his prior placement in administrative segregation) without first satisfying the favorable termination requirement of *Heck*.

Nothing at issue here would be helpful to understanding the issues presented in *Muhammad*. In *Muhammad*, the prisoner's § 1983 challenge was premised on a challenge to the merits of the underlying decision charging him with misconduct, *i.e.*, that the misconduct charge was, in fact, wrong because it was retaliatory. The question is whether *Heck*'s "favorable termination" requirement is applicable to that claim. Here, Respondents do not challenge their confinement, sentence or any disciplinary or parole decision; the challenge is purely procedural. Heck's favorable termination requirement has "no application at all" to Respondents' claims. *Spencer*, 523 U.S. at 17.

In addition, granting *certiorari* and consolidating this case with *Muhammad* would serve only to disrupt the briefing and argument schedule in that case, where merits briefs already have been filed, with little or no benefit to the Court. The parties' briefs would address entirely different factual scenarios, different issues, and different rules of law. Any resultant consolidated decision would likely cover two significantly different areas of *Heck*-related jurisprudence.

At best, if Petitioners' characterization of *Muhammad*'s impact to this case is correct, a summary disposition order, not a grant of *certiorari*, might be appropriate. *E.g.*, *Board of Trustees of the Univ. of Illinois v. Doe*, 119 S. Ct. 2016 (1999). But even that solution may add little value to the issues presented here. Because of the fact-bound nature of § 1983 challenges to parole procedures and the widely varying scenarios presented in *Muhammad* and *Dotson*, the Court's

decision in *Muhammad* is unlikely to have any impact on the viability of Respondents' § 1983 claims.

CONCLUSION

The petition should be denied.

Respectfully submitted,

ROBERT S. WALKER
(Counsel of Record)
EDWARD J. SEBOLD
JOHN Q. LEWIS
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, OH 44114-1190
(216) 586-3939

Counsel for Respondents

September 22, 2003